

TO: Allen Larson, Deputy Executive Director, UI

FROM: Tim Rogers, staff, Study Subcommittee

SUBJECT: ESC Ad Hoc Subcommittee Meeting December 9, 2009

DATE: December 15, 2009

As you know, members asked many questions regarding unemployment insurance at the last meeting. I have summarized the questions below. Please insert your agency's response after each question.

When applicable, provide the section(s) of SC Law and/or regulation(s) (section or regulation number, not entire text). For each below, succinctly describe the agency's policy, and practices regarding:

DRUG RELATED SEPARATIONS

- 1) Awarding U.I. to persons losing their job for drug related issues, including failed drug tests, use of alcohol on the job, possession of illegal drugs, DUI, etc.

Persons losing their job for drug related issues, including failed drug tests, use of alcohol, possession of illegal drugs, DUI, etc. are almost always disqualified from receiving benefits. In the case of failed drug tests, the law sets specific parameters that must be met before disqualifying the claimant. However, an admission of drug use will also result in a disqualification. The penalty for failing to take a drug test is 18 weeks. The penalty for failing a drug test is 26 weeks. The use of alcohol on the job, possession of illegal drugs and work-related DUI's result in disqualifications of 26 weeks. (See 41-35-120(2)(b))

- 2) How can we prohibit these claimants from receiving benefits under the Federal authorized extensions?

These claimants can be prevented from drawing federal emergency or extended benefits in the current benefit year by making the penalty for that infraction similar to the penalties for voluntarily quitting work. By forcing the claimant to re-qualify for benefits by returning to work and earning eight times his weekly benefit amount with an employer, you can make his eligibility for federal benefits more difficult.

- 3) How does ESC determine and apply (parameters) in benefit determination? Are there written guidelines for "uniform" application of the law?

All of the Agency's adjudicators have a guideline for assessing weeks of disqualification based on the reason for separation. Absenteeism/tardiness generally carry lesser disqualifications than insubordination or theft.

- 4) How often do these types of cases go before the Commissioners? Is the decision by the adjudicator to “qualify” or to “disqualify” claimants for this type of unemployment situation?

In the course of a year, roughly ten percent of all cases that are heard at the Lower Authority Appeals level result in Commission appeals. That same percentage probably applies to drug related cases.

- 5) How does SC compare to other states in this practice?

All states that we are aware of treat these separations as discharges and each state’s law for applying disqualifications would apply. Some states would require the claimant to re-qualify by returning to work and others would disqualify for a certain number of weeks as we do.

- 6) Does Federal law speak to this?

No, Federal Law does not address this.

- 7) Which of these cases is reviewed by Solicitor’s Office?

The ESC does not refer potential criminal issues to the Solicitor’s Office. That would be left up to the employer.

- 8) Can we limit claimants to 26 weeks of eligibility?

By law, a claimant’s maximum entitlement to benefits is twenty-six times their weekly benefit amount or one third of their total base period wages, whichever is less. Claimants are only receiving more benefits than that now because of federal emergency programs and state extended benefit programs. We administer these federal programs as per their guidelines and have no statutory authority to make changes in them.

- 9) How can SC law be amended to remedy this problem (disqualification)? Can state law be amended simply to say these (types of) claimants cannot qualify?

State law can be amended to require all claimants found to have been separated for drug related offenses to return to work and earn a re-qualifying amount of money before being eligible for benefits.

- 10) Please provide the written procedures/training for adjudicators in this area. Training for adjudicators is as follows:

Training lasts from 2-4 months, depending on the individual and their claims and benefit experience.

Adjudicators are provided ETA Handbook 301 to review. These guidelines outline the necessary information required to adjudicate a claim.

The new adjudicator is then placed with an experienced adjudicator who reviews the actual claims. The experienced adjudicator reads the claim as does the new adjudicator. The experienced adjudicator makes a decision. The new adjudicator is allowed to ask questions regarding the decision and/or agency policy. Once the experienced adjudicator feels like the new adjudicator is prepared to adjudicate claims, they are allowed to make decisions and have the experienced adjudicator go over them prior to actual entry. This process takes from 1-4 months depending on the individual progress of the new adjudicator.

When the experienced adjudicator feels the new adjudicator is ready to make decisions, they inform the supervisor of the Adjudication Unit. The new adjudicator then assumes the role of the adjudicator. They pull claims and follow law and policy with a resultant decision. If they have questions, they are encouraged to ask the adjudicator for their opinion.

11) Please provide a history (data) of the reasons for disqualification.

There is no written history of these reasons for disqualification. They have been in effect since the law was changed in the 70's.

TREATMENT OF SEVERANCE

1) If claimant receives severance, how does it affect benefits?

There is no provision in SC law that allows for treating severance/separation pay as disqualifying income. It was in the law at one time but was repealed.

2) If claimant receives pension, how does it affect benefits?

There are two issues that need to be addressed when discussing retirement/pension. First, the law requires that anyone who voluntarily retires is to be disqualified from receiving benefits indefinitely until they have returned to work and earned eight times their weekly benefit amount. Involuntary retirements are looked at on their merits to determine what, if any, disqualification is imposed.

Also, current law calls for any pension attributable to a base period or chargeable employer to be deducted from any claim. The portion of the pension that is deducted is the portion contributed by the employer. The employee contribution portion is not deducted. (If a claimant is receiving a \$2,000 monthly pension from a base period employer and the employer contributed eighty percent of that amount, \$1,600 of that pension is deductible each month.) This applies whether the retirement is voluntary or involuntary.

Pensions received from earlier military service or other employment that is not in the base period is not deductible. The only exception to the military pension rule is if the claimant has federal employment in the base period. In that case, the pension is considered from the federal government and so is the employment. That pension is deductible.

The law could be changed so that all pensions would be deductible regardless of when they were earned.

- 3) Explain how “circumstances” of “retirement” affects benefits.

First, the law requires that anyone who voluntarily retires is to be disqualified from receiving benefits indefinitely until they have returned to work and earned eight times their weekly benefit amount. Involuntary retirements are looked at on their merits to determine what, if any, disqualification is imposed.

Regardless of the voluntariness of the retirement, if someone is receiving a pension from a base period or chargeable employer, the retirement is deductible.

- 4) If company downsizes and employee is “let go” and gets severance and/or draws a pension, how are UI benefits affected? Please elaborate.

Please see responses to questions 2 and 3.

- 5) How do social security benefits affect benefits?

Social Security benefits are not currently treated as deductible income. It has been treated as such in the past and can be done so again.

OTHER QUESTIONS

- 1) Describe process use for “cross checking” filings for accuracy, verification.

All of our claims are checked against the Social Security Administration’s data base to ensure that the holder of the card is legitimate and proper. Many of our claims are also run against the Department of Motor Vehicle data base as well. Furthermore, we have a Quality Control Unit whose sole function is to validate a random sample of claims to make sure they have been taken properly.

- 2) Having state/federal taxes withheld from UI benefits are voluntary? Does ESC recommend any changes in this area?

By federal law, unemployment insurance benefits are taxable income. We are required to give claimants the option of withholding them. We do not recommend any changes in that procedure.

- 3) Describe ESC's verification of claims compliance with laws, regulations, and policies.

ESC's programs are monitored and audited by the US Department of Labor. US DOL determines whether the programs are being conducted properly. Also, the Quality Control Unit would provide assistance in this effort.

- 4) SC no longer requires employer signature verification, correct? Any recommendations in this area?

SC has not required employer signatures for work search in a long time. The employer community did not like being asked for that information. Since the way work search is done in this era, we don't plan to go back to asking for signatures. So much work search is done over the internet or by phone that it is not practical to require signatures.

- 5) If claimant has "seeking work" compliance challenged, what documentation is needed by him or her to verify compliance (e.g. job interview out of state). Would signed document by prospective employer be sufficient? If not, what would be sufficient?

The information a claimant would need to demonstrate they were out of town on a job interview is minimal. A signed document by the prospective employer should be more than enough. Having a job interview that conflicts with one of our appointments is the only acceptable reason for missing one.

- 6) How does the agency "review all circumstances" to make determination with regards to "unhealthy work environment" for claimant with health problem?

The agency reviews all of the available information from the claimant and employer whenever there are charges of an "unhealthy work environment". We do not, however, initiate any DHEC investigations to get them involved.

- 7) The Local Area determines frequency of contacts with claimants' to verify "seeking work" or "in training", correct? Any recommendations in this area?

The US DOL guidelines instruct us to use local labor market information in determining how many job contacts each claimant should make based on their occupation. We have instructed the local claims personnel in that regard.

- 8) What is required for agency to know claimant's status on weekly basis? (This was raised in the discussion of comprehensive accountability of claimants)
Of the 135,000, how many claimants and by what method will the claimants be checked on for compliance? What is the "industry's best practice"?

The state and federal requirement is that each claimant must certify for each payment period that they are meeting basic eligibility requirements. Whether they are filing weekly or bi-weekly, all claimants are asked to certify that they are unemployed, able to work, available to accept work and actively seeking full time employment. It is basically an honor system and we conduct periodic eligibility reviews to ensure they have been honest.

- 9) How can the agency's role be "strengthened" assisting the unemployed who are not in the UI program?

The unemployed who are not in the UI program should continue to use the services of the local one stop career centers in locating work or seeking training opportunities.

- 10) What can the state do for the "long term" unemployed?

The State can help the "long term unemployed" by creating more jobs and encouraging more employers to list their vacancies with the ESC.